

Circuit Court for Prince George's County
Case No. CJ172654

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 413

September Term, 2018

CARLISS A. MORAN

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 31, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Prince George’s County, Carliss Moran, appellant, was convicted of second-degree assault and fourth-degree sexual offense. On appeal, Moran claims that his convictions should be reversed because there was not a valid waiver of his right to a jury trial. The State concedes that Moran’s convictions must be overturned for that reason. We agree with the parties.

A criminal defendant’s right to a jury trial is a fundamental right guaranteed under both the United States and Maryland Constitutions. *See* U.S. CONST. amend. VI, XIV, § 1; Md. Declaration of Rights, Art. 5, 21, 24. But a defendant may elect to waive this right pursuant to Maryland Rule 4-246(b). That rule provides:

A defendant may waive the right to a trial by jury at any time before the commencement of trial. The court may not accept the waiver until, after an examination of the defendant on the record in open court conducted by the court, the State’s Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the waiver is made knowingly and voluntarily.

“The waiver of a jury trial is a two-step process. The trial judge must determine that the waiver is knowing and voluntary. And the trial judge must make that finding on the record.” *Meredith v. State*, 217 Md. App. 669, 673-74, *cert. denied*, 440 Md. 26 (2014).

When the case was called for trial, defense counsel introduced himself and told the court that Moran “pleads not guilty to these charges, waives his right to a trial by jury, [and] elects to be tried by this court.” The court responded “Okay” and directed the State to call its first witness.

It does not appear from the record before us that a waiver in accordance with Rule 4-246(b) occurred at any other point in the proceedings. Accordingly, we agree with the

parties that the convictions must be reversed, and the case remanded for a new trial.¹ *See Smith v. State*, 375 Md. 365, 381 (2003) (“If the record in a given case does not disclose a knowledgeable and voluntary waiver of a jury trial, a new trial is required”) (citations omitted).

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
REVERSED. CASE REMANDED TO THE
CIRCUIT COURT FOR FURTHER
PROCEEDINGS NOT INCONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY PRINCE GEORGE’S COUNTY.**

¹ Ordinarily, to challenge the validity of a jury trial waiver, there must have been a contemporaneous objection in the trial court. *See Spence v. State*, 444 Md. 1, 14-15 (2015). Although there was no objection to the court’s acceptance of the jury trial waiver here, we shall, in light of the importance of the constitutional right to a jury trial and the complete lack of any on-the-record examination of Moran, exercise our discretion to review the unpreserved claim pursuant to Maryland Rule 8-131(a).